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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,576	09/08/2003	Foo Wah Foong	2698	9868
7590 03/28/2006			EXAMINER	
Beck & Tysver, P.L.L.C. Suite 100 2900 Thomas Avenue S. Minneapolis, MN 55416			HOLMAN, JOHN D	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/657,576

**Applicant(s)**

FOONG ET AL.

**Examiner**

John D. Holman

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 7-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Invention I, claims 1-6, in the reply filed on 2/28/2006 is acknowledged.

Claims 7-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected kit for inflicting injury, a method of inducing brain injury, and two methods for inflicting brain injury, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/28/2006.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldfarb (US 3578320).

Regarding claim 1, Goldfarb discloses an apparatus comprising a barrel (10) extending in a vertical direction having a terminating end (44) and a drop weight (16). See figure 2. The use of the device to inflict brain injury in a controlled manner by dropping a weight under the force of gravity onto an exposed brain surface of an animal is merely intended use and is not given any weight in the examination of the application

because Goldfarb's apparatus is structurally capable of inflicting brain injury when positioned adjacent to the exposed brain surface of an animal.

Regarding claim 2, Goldfarb discloses an apparatus comprising a weight restraining means (14'). See figure 2.

Regarding claim 3, Goldfarb discloses an apparatus wherein the weight restraining means (14') includes a pin extending horizontal through diametrically opposed holes. See figure 2.

Regarding claim 4, Goldfarb discloses an apparatus wherein the barrel (10) defines more than one set of diametrically opposed holes (32) being vertically spaced along the barrel (10). See figure 2.

Regarding claim 5, Goldfarb discloses an apparatus wherein the barrel (10) is open at both ends (28, 44). See figure 2.

Regarding claim 6, Goldfarb discloses an apparatus wherein the distance selected will induce concussion, contusion, or secondary brain damage to a small animal. See figure 2.

### ***Conclusion***

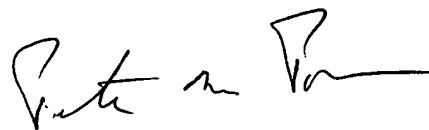
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 5197735 must be considered because of the barrel (32), the weights (36) disposed within, the weight supporting means (16), and the openings at the top end (38) and the bottom end (42).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Holman whose telephone number is 571 272-2754. The examiner can normally be reached on Monday through Friday 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDH



PETER M. POON  
SUPERVISORY PATENT EXAMINER

3/20/06